

MINUTES

REGULAR MEETING OF
CITY OF ALAMEDA ECONOMIC DEVELOPMENT COMMISSION
THURSDAY, JULY 17, 2008
7:30 PM

1. CALL TO ORDER AND ROLL CALL

Chairman Wetzork called the meeting to order at 7:30 p.m.

Present: Chairman Wetzork. Commission Members: Bonta, Lindsey, Ryan, Schmitz, and Zuppan

Absent: Dahlberg

Vacancy: (2)

Staff: Eric Fonstein and Rosemary Valeska

2. MINUTES

2.a. Minutes of the Regular Meeting of June 19, 2008

Motion (Schmitz), seconded, and unanimous to approve the minutes of the Regular Meeting of June 19, 2008, as corrected. Commission Member Zuppan had provided corrections relative to her comments during the Alameda Towne Centre presentation.

3. CONSENT CALENDAR

(None)

4. ORAL COMMUNICATIONS - PUBLIC

(None)

5. UNFINISHED BUSINESS

(None)

6. NEW BUSINESS

6. a. "Superstore Prohibition" The City of Alameda is considering an amendment to the Alameda Municipal Code to prohibit retail stores larger than 90,000 square feet in size that include more than ten percent (10%) floor area devoted to the sale of non-taxable items. The proposed prohibition would apply in all zoning districts in the city. Staff is requesting the Economic Development Commission review the proposed zoning amendments and make a recommendation to the City Council.

Douglas Garrison, Supervising Planner, gave a recap of the written staff report provided in the packet.

Public speaker: Mike Henneberry of UFCW Local No. 5 spoke in support of the proposed Municipal Code amendment. Prior to the meeting, Mr. Henneberry had provided a letter to the EDC Members, and a copy of this letter is attached to these minutes for reference. Mr. Henneberry cited several Alameda businesses with employees represented by Local No. 5. He recapped the history of superstores and the negative impacts on local merchants. He also discussed how other communities have dealt with this issue. He stated that Alameda's proposed ordinance was based upon Livermore's; however, Livermore's threshold for non-taxable sales is five percent floor area and Alameda's proposed threshold would be ten percent. Also, Alameda's ordinance would exempt areas already governed by a Development Agreement, i.e., Alameda Landing and Harbor Bay.

Commission Member Bonta requested further clarification as to the differences between Livermore's ordinance and Alameda's proposed ordinance. Regarding the areas governed by Development Agreements, Mr. Garrison explained that a Development Agreement was a contract between the City and the developer for that specific project, which has already been approved. The Development Agreement locked in zoning requirements in effect at the time the project was approved. Mr. Garrison added that the question on everyone's minds was Alameda Point. As Alameda Point is developed, a Master Plan will be brought forward. A Master Plan acts as a zoning ordinance for that project.

Commission Member Bonta asked Mr. Henneberry to cite an example of a superstore in the Bay Area. Mr. Henneberry responded that the closest Wal-Mart superstores were in Vacaville and American Canyon. Also, Tulare has a Target superstore. There are none in the immediate Bay Area.

Chairman Wetzork stated that his understanding of Target was that they were discount department stores, not superstores. Mr. Henneberry clarified that he was only talking about discount stores with an added grocery store in ten percent or more of the floor area.

Commission Member Bonta questioned why Mr. Henneberry did not think the Conditional Use Permit process alone was enough. Mr. Henneberry responded that the superstores have unlimited time and resources, they make repeated attempts, and they wait for changes in the make-up of Planning Boards and City Councils. They end up wearing cities down, and this is what Mr. Henneberry claims happened in American Canyon.

Public speaker: Karen Bey. Ms. Bey cited a recent article by the Public Law and Research Institute at Hastings College of Law regarding superstores and the cities that have passed ordinances. Communities protect the flavor and character of neighborhoods through regulation and

control. Superstores contain full retail and full grocery. A superstore would impact our existing retail stores, such as Safeway, Nob Hill Foods, and Trader Joe's, and it is important to protect those. She added that she would recommend the threshold for superstores be set at 90,000 square feet and five percent as opposed to ten percent. This will send a strong, united message that we want to protect our existing food retail stores and our specialty food stores like Trader Joe's. She also stated that she was in support of the "big box" ordinance for stores totaling 30,000 square feet or more. She expressed concern that Alameda Point might be exempt from the proposed superstore ordinance, and questioned why all this work was being done if the areas being developed for retail could be exempt. The ban on supercenters is a good thing for Alameda.

Commission Member Zuppan noted that one of the points raised by the Planning Board was that with this ten percent limitation, a 100,000-square-foot store with 10,000 square feet of non-taxable items would be prohibited and could not apply for a use permit; however, a 150,000-square-foot store, or larger, could have up to 14,999 square feet for non-taxable items. She stated that she was also thinking about it in terms of the taxable vs. non-taxable and what does that do to the economics of Alameda and our efforts to stop sales tax leakage. Has anyone else who has done one of these bans based on square footage percentage, have they tackled it some other way? It seems incongruent that the bigger the store, the more you can have.

Mr. Henneberry responded that the Livermore Ordinance had been submitted with five percent non-taxable and it was changed by staff to ten percent. He stated that he did not know what the motivation was for that. That had been the standard in the early 1990's. Supercenters at that time had a set formula: 150-200,000 square feet and the ten percent made sense at that time. It subsequently was changed because supercenters started changing their parameters to meet new thresholds when cities changed their ordinances. He stated that it would be his preference if it was five percent. Also, he did not agree that the development agreement areas should be exempt from the proposed ordinance.

Commission Member Bonta asked for a working definition of a supercenter, as opposed to a discount center, in terms of square footage. Mr. Henneberry responded that it really was more about what was sold. In Lynwood, they passed an ordinance that states a supercenter is 100,000 square feet with five percent grocery. Wal-Mart moved in with a 90,000-square-foot supercenter. These days, they go in anywhere from 75,000 to 250,000 square feet. If you have a full service grocery store with meat, produce, deli, and a bakery, you are pretty much a supercenter because it takes up a lot of square footage.

In response to a previous comment, Mr. Garrison clarified for the record that staff did not change from five percent to ten percent. That was

direction given by the City Council, which was not to copy the Livermore ordinance but to be very specific that this would apply to stores of over 90,000 square feet with more than ten percent devoted to non-taxable goods.

Commission Member Zuppan asked how other cities approach this. Are other cities' prohibitions based on a percentage/square footage combination as proposed here? Mr. Henneberry responded that there is no one standard nationwide – it's all across the board. It ranges from an outright prohibition of superstores based on square footage to a five to ten percent limit of area for non-taxable sales.

Commission Member Bonta noted that the Alameda County Board of Supervisors did not impose a ban for the unincorporated areas. Instead, they require an Economic Impact Analysis. Mr. Henneberry responded that initially, an Ordinance had been proposed based on five or ten percent; however, the matter did not go to the County Planning Commission first. As a result, Wal-Mart sued the County. The County pulled the ordinance and introduced the requirement for the Economic Impact Analysis. It's basically the equivalent of the conditional use permit. Mr. Henneberry re-emphasized that the communities using the conditional use permit model are constantly pounded by superstore operators; whereas, if there is a ban in place, that settles it. Commission Member Bonta asked if Alameda County has been pounded by applicants, and if there has been a superstore. Mr. Henneberry responded that he didn't know if an application has been submitted. He restated what happened in American Canyon.

Commission Member Ryan asked if Wal-Mart was non-union. Mr. Henneberry responded that was correct.

Commission Member Bonta stated that these types of ordinances seem to attempt to capture something – not by their express terms but by way of the best proxy. They attempt to capture stores that are non-union and have poor labor practices, but these ordinances do not expressly discuss the labor practices. By capturing stores with 90,000 square feet and ten percent floor area dedicated to non-taxable items, there's currently a certain type of behavior that is associated with that. This behavior could potentially change. He stated that this might be "pie in the sky" but there is a possibility in the future of a store of that size with that square footage behaving appropriately, treating labor fairly, and having unions. However, that would be prohibited under this proposed ordinance. The conditional use permit could provide more flexibility in the case of fair labor practices being used and there's a good sales tax impact for the community, and the 90,000 square feet and ten percent requirements are all met. Then you would be faced with revising the ordinance. The conditional use permit allows some fine surgery of the City Council or the body making the review. The proposed ordinance would be a blunter instrument but would

provide for a strict prohibition. There are trade-offs. Mr. Henneberry responded that cities using the conditional use permit process instead of a strict prohibition end up with supercenters. Regarding the labor practices, Mr. Henneberry stated that his job was to protect grocery jobs and the superstore prohibition helps to do that. This proposed ordinance would not ban a 100,000-square-foot store that does not sell groceries, e.g., Babies R Us or Barnes & Noble. However, this is not just about protecting the grocery jobs. The people that shop at supercenters are going to buy items in addition to groceries, which would affect stores like Pagano's. He added that we need to deal with what is happening now and not what may be.

Commission Member Zuppan stated that as part of a marketing thought process, she was wondering how much of a target market we were for this if we did not pass the ordinance, and asked how many areas in the East Bay do not have one of these ordinances outright banning these stores. Mr. Henneberry responded that a lot of municipalities do not have these but a lot are considering them. Oakland has one. San Francisco has a "grocery workers justice" statute, which is much more complex than what is being proposed here. San Leandro is in the process of adopting one. In terms of cities similar to Alameda, the Brisbane City Council just turned down an application for a Wal-Mart supercenter; however, Brisbane does not have a ban. Commission Member Zuppan stated that she was wondering how much of a target we would be. Mr. Henneberry responded that with all the open land, we are a target.

Chairman Wetzork stated that recently the EDC did a complete review of the Economic Development Strategic Plan. One of the major things that came out of that was to reinforce that we were trying to attract businesses that would supplement or complement our existing businesses, such as the neighborhood-serving businesses in the Stations or other neighborhood shopping areas. He stated that he was inclined to agree with the Planning Board's recommendation on this. Our present plan is sufficient to provide us with the protection we need for our local businesses. Therefore, he stated that he was not in favor of accepting the proposed amendment before the EDC.

Commission Member Schmitz stated that over the years, he has been a student of various economic development strategies and has worked in various capacities to try to impact policies that will help working families and small businesses. On this commission, he has supported those who realize that small businesses and working families are the backbone of Alameda. There is something special about Alameda and that the civic process works here. He stated that things like term limits and mandatory minimum sentencing come out of a distrust of failed systems. He stated that he did not believe that Alameda was that place. He stated that he looks at the civic engagement of people on Alameda's boards and commissions as well as the people attending the meetings to affect their

decisions. He stated that what he did not like about the proposal was the limits of discretion. We have the tools with the political system in Alameda with the conditional use permit and the Municipal Code Amendments of March 18, 2008, to stop these things, which we all agree would be detrimental. He stated that a Wal-Mart in Alameda would be detrimental and he would do everything he could to stop that from happening. He stated that he did not see the need to say to Council or the Planning Board, "the tools are not enough because we don't trust you." In terms of superstore applicants coming back over and over, he stated that he felt confident that the City could deal with that. He also stated that he felt confident that if the City doesn't, that frankly, folks would throw them out. This is the kind of town where civic participation is real, not just talked about. The reason is not for lack of understanding of the impacts or lack of support for the issues surrounding this, but it is the issue of discretion. For that reason, he stated that he would not support the limits because he does not think that this town's political process is broken.

At this time, Chairman Wetzork entertained a motion to recommend approval or disapproval of the amendment. Commission Member Schmitz moved not to support the amendment as proposed. Seconded by Commission Member Ryan. Chairman Wetzork asked for a show of hands in support of the motion. Chairman Wetzork and Commission Members, Lindsey, Ryan, and Schmitz voted in favor of the motion. Commission Member Bonta voted no. Commission Member Zuppan abstained. Motion failed due to the lack of five affirmative votes.

Chairman Wetzork stated that the Commission needed to come to a decision tonight as City Council was looking to EDC for a recommendation. Commission Member Zuppan stated that she agreed that these superstores were a bad idea and they shouldn't be here; however, we really don't have the space for them and they would be very unlikely to succeed. She stated that she wondered if it was really necessary to pass the ordinance. She also stated that it was difficult for her to understand when passing the ordinance would be a bad idea because we have plenty of other retailers meeting that non-taxable need. She stated that she was having a difficult time with passing an ordinance to stop something that's not happening and seems rather unlikely. She stated that on the other hand, she was having a difficult time with seeing what the negative consequences would be for a town of our size.

Commission Member Schmitz stated that the point he was making was that we don't know and that we're limiting discretion. There are times when you need to do that but he did not think that Alameda was in that place where we need to do that. He stated that he knows there is a great deal of concern and that he supports that concern because Alameda's small businesses and working families that make up the backbone of Alameda need to have the full support of the commissions and boards. He

added that he does not feel the system is broken here though and that the ability to fix it is there, too. He stated that to him, it was a process thing about discretion and he does not support in this case limiting discretion. He stated that he does not know what situation might present itself. He would not support the situation as presented by Mr. Henneberry; however, he does not know going forward what other situations exist, and that the limitation of discretion was the basis of his opposition.

Commission Member Bonta stated that he was in agreement with everything Commission Member Schmitz said, but he was coming out a little bit differently on it. He stated that he thinks the tool is an imperfect tool. It is a little blunt and it does not account for a lot of possibilities or potential scenarios in the future. He stated that everything the Planning Board said were entirely legitimate concerns. One recommendation he would make would be to consider an amendment that would allow for more flexibility and would address the issues of the Planning Board. The other side is that we do want to have development that will generate some good sales tax dollars for the City. We have been relying a lot on parcel taxes and people are having some fatigue about that. Having some sales tax revenues to rely on is important. There is an important balance going on here. He stated that he would generally agree that flexibility and discretion are important but he did not think that anyone would envision, with the known information we have today, that a store that meets these requirements would be approved. Is it possible in the future that one would have good labor practices and be good for the community and good for business? It's possible. At that point, perhaps this ordinance could be revisited. But based on the information we know now, that's why he came to his decision. He also stated that it was close and that he agreed with the principles articulated by Commission Member Schmitz.

Chairman Wetzork stated to Commission Member Zuppan that she could change her vote if that was what she wanted. Commission Member Zuppan stated that after hearing the discussion, if we decide to do this, to see it be more nuanced than it is. She stated that she did not see this as an impending danger so there would be time to develop something that is a bit more nuanced. She stated that even though we think that something like this would not get approved right now, in general, the concept (of the proposed ordinance) is not bad, and while she would prefer taxable to non-taxable in terms of development, just because it has good things doesn't mean that it's necessarily the right thing to do. She indicated that she would be ready to vote again and not abstain.

Chairman Wetzork entertained a new motion from someone other than the originator of the first motion. Commission Member Zuppan moved that the EDC recommend to not approve this, as is; that we recommend that it be more nuanced or that we wait until it is a more significant issue. Seconded by Commission Member Ryan. Commission Member Schmitz asked if

there was the will to work on something more nuanced and what that would look like, something that allowed for discretion. He asked Mr. Henneberry's for this thoughts on this. Mr. Henneberry responded that he understood the concept of nuance, as he has to compromise on his job every day. Commission Member Schmitz clarified that by nuance he did not mean compromise, it's discretion – the ability to hold principles but to have the decision makers accountable to the political process, and not to say, "this is what you get to decide on." The principle is, what are we allowing the decision makers to decide on?

Commission Member Bonta stated that we all seem to be agreeing on the same principles but not the tools to implement the principles and have them enforced. It sounds like we have problems with the policy and not the principles driving the policy, and he was not sure where that takes us.

Chairman Wetzork called for the vote. There were five affirmative votes and one no vote by Commission Member Bonta. Chairman Wetzork stated that the EDC would send a recommendation to the City Council that we do not approve. Chairman Wetzork thanked the public speakers for their contributions to the discussion.

7. REPORTS

7.a. Oral Report: Commission Member Schmitz – EDC Representative to the Bicycle Plan Task Force

Commission Member Schmitz stated that there had been no activity so therefore, no report.

7.b. Oral Report: Commission Member Schmitz – EDC Representative to the Alameda Point Advisory Task Force

Commission Member Schmitz stated that there has been no activity so therefore, no report.

8. WRITTEN COMMUNICATIONS

8.a. Upcoming EDC Agenda Items

8.b. *Redevelopment – Building Better Communities*

9. ORAL COMMUNICATIONS – COMMISSION MEMBERS AND STAFF

Chairman Wetzork stated that he has been getting feedback that the City is not business friendly, but believes that this is a misconception.

10. ADJOURNMENT

The meeting was unanimously adjourned at 8:40 p.m.

Respectfully submitted,

Rosemary Valeska
EDC Recording Secretary

RV